

A
DISCOURSE
CONCERNING
FEWS
AND
SUPERIORITIES,
SHEWING

That the *Rigid Observance* of them is
inconsistent with the Nature of the
BRITISH CONSTITUTION,

Humbly Address'd to the Parliament of
GREAT BRITAIN.

----- *Quæ gens tam Barbara morem*
Permittit patrium ----- Virg.



IV

EDINBURGH,
Printed for J. Thomson, and Sold at the
Printing-House opposite to the Trone-
Church, 1716. [Price Three Pence]

Bn 2027.16.3555

The CONTENTS.

- Sect. I. **O**F Fews in General.
Sect. II. **O**The Nature of a Few more particularly consider'd.
Sect. III. Concerning improper Fews.
Sect. IV. Concerning the Original of Fews in Scotland.
Sect. V. A Passage of Buchannan relating to this Subject.
Sect. VI. Of some particular kinds of Fews that obtain in Scotland.
Sect. VII. The Kings of Scotland were never Masters of the Soil.
Sect. VIII. Concerning the Nature and Design of the British Constitution.
Sect. IX. The Kings of Scotland were never absolute Monarchs.
Sect. X. It does not appear from our positive Law, that the Kings of Scotland were absolute Monarchs.
Sect. XI. A further Illustration of this Matter from positive Law.
Sect. XII. The rigid Observance of Fews is inconsistent with the present Constitution.



SECT.

SECT. I.

Of Fewes in General.

IF we trace *Fewes* and *Superiorities* to their first Original, we shall find, the Invention of them was intirely *Gothick*. After all the Splendor and Politeness of the *Romans*, and the Grandeur of their Empire was defac'd and destroy'd by the furious Inundations of the *Goths* and *Vandals*, these *Fewes* began to obtain: Nor is it to be imputed to any thing else but an Air of Antiquity they carry along with them, that some civiliz'd Nations are pleas'd to continue this *barbarous* Custom.

The first occasion of *Fewes* is generally agreed to have been this. These *Northern* Conquerours, who had over-run with an incredible and resistless Rapidity, *France* and *Lombardy*, and the other *Western* Parts of the *Roman* Empire,

A 2

thought

thought fit to distribute and divide the Lands of the vanquish'd among their own Officers, in Consideration of *past*, and and upon Condition of *future* Services. But if so unjust an Invasion could give any Right at all, whether those of the victorious Army were not all equally *Masters of the Soil*, at least in Proportion to their Merit and Valour, I shall perhaps afterwards take occasion to examine.

S E C T. II.

The Nature of a Few more particularly consider'd

THE Word *Few* is intirely *Gothick*, which some imagine is deriv'd from the *German* Term *Feeck*, signifying among them *Mortal Enmity*. In the Text indeed of the *Feudal Law*, it seems not improperly to be deduc'd from the *Roman* Word *Fides*: And not without Ground, since Fidelity is the principal Ingredient in all *Fews* and *Superiorities*.

Altho' it is not absolutely necessary to *this Discourse* to make a long Disquisition of

of the several kinds of *Fews* that have obtain'd, yet we shall transiently take a View of them, were it only to shew that the very Terms made use of to distinguish the several Sorts of them do plainly point out their *Barbarous Original*.

In the first place they are divided into *proper* and *improper Fews*. The *proper Few* is that wherein the common and *proper* Nature and Method of *Fews* obtain. It is subdivided into *Noble* or *Ignoble*.

Feudum Nobile is that which is granted by him who has jointly both the Will and Power of Nobilitating. And this again is either *Feudum Regale*, or *Non Regale*.

Feudum Regale is that which is conferr'd by the Authority of the supreme Power with a *Regal Dignity*.

Feudum non Regale is that which is conferr'd by the Authority of the Prince with a Dignity that is less than *Regal*.

Feudum Ignobile is that in which any one of the aforesaid Requisites is wanting.

Another Division of *Fews* is that of *Ecclesiastical* and *Secular*. The first is a *Few* constituted in some Thing belonging to the Church; The other in some Thing that does not appertain to it.

Feudum

Feudum Ligium, is that in which Fidelity is promis'd and perform'd by the *Vassal* against all Men, without excepting or preferring any one.

Feudum non Ligium, is that whereby the *Vassal* promises Fidelity, but with an Exception in Behalf of the *Emperour* and his former *Superior*.

S E C T. III.

Concerning Improper Fews.

HAVING thus explain'd, as briefly as possible, the several Branches of *Proper Fews*, we come now to handle the other Part of this general Division.

An *Improper Few* is that which in some Part of it degenerates from the common Nature of *Fews*. The most considerable Sub-divisions of it are these.

Feudum Famineum is that in which a Woman was first invested.

Feudum mere Hereditarium, is that which is granted to the *Vassal* and his Heirs whatsoever.

Few-

Feudum Francum, is that in which no Services are perform'd.

Feudum Conditionatum, is when in the Investiture of it, some particular Services are expressly mention'd.

Feudum Pignoratitium, is that in which the Superior invests the Vassal upon receiving a Sum of Money, at the same Time reserving to himself a Power of redeeming it.

Feudum de Camera vel Carvena, is when a particular Sum of Money, or a certain Quantity of Wine or Corn to be pay'd yearly, is granted in *Few*.

Feudum Guardiae, is that which is bestow'd on him who is intrusted with the keeping of some Castle or City, in Consideration of his Labour and Vigilance.

Feudum Castaldiae, is that which is granted to him who manages one's Affairs, for his Care and Pains.

Feudum Advocatiae, is that which is bestow'd on one for his Advice and Assistance in pleading Causes.

Feudum Soldatæ, is when there is a yearly Gratuity pay'd and turn'd into a
Feu-

Few, consisting in Money, Wine, Corn, &c. in Place of Aliment.

Feudum Habitationis, is when the Possession of a House or Castle is granted to one in *Few*.

Feudum Pensionarium vel Censuale, is when the *Vassal* is oblig'd to pay yearly a certain *Pension*.

Feudum Laudemiale, is when besides *Services* there is a certain *Canon* or *Laudemium* to be pay'd, or when a *Laudemium* alone is yearly pay'd instead of *Services*.

Feudum Quaternatum, is when some *Revenues* are paid, for the Table or Maintenance of the Prince, in Place of *Services*.

Feudum Apertura, is that which is granted in such a Manner, that the *Vassal* in Stead of *Services*, when War approaches, is oblig'd to open the Gates of a Castle or City to the *Superior*.

Feudum Alienabile, is that which, contrary to the common and proper Nature of *Fews*, is so granted to the *Vassal*, that he is allow'd to transfer the *Few* to any other Person.

S E C T. IV.

Concerning the Original of Fews in Scotland.

WHEN *Fews* had their Rise and Beginning in this Nation, does not so evidently appear from our *Historians*, as from the old Books of our *Law*.

In them indeed it is written, that *Malcolm* one of our Kings, the Son of *Kenneth*, divided all the Lands of this Kingdom among his own Men or Officers, without retaining to himself the Property of any Thing except the Regal Dignity, and the Hill or Rising Ground that is at *Scone*, which from the Effect they called *Mut-Hill*, that is, the *Hill of Actions*. And our Lawyers add, That in Consideration of so great a Benefit, and that the prince might be able to support himself with the greater Conveniency and Grandeur, the Estates of the Kingdom, or, as we call it now, the *Parliament*, granted their Sovereign the *Custody* and *Relief* of all the Lands that belong'd to the Heir of any deceased Baron.

But, for my Part, I must confess, I am very much at a loss to understand when, upon what Occasion or Pretence, and by what Title this celebrated *Division* of the Lands of *Scotland* was made. It cannot be affirm'd with any Colour of Reason, that it proceeded from the same Motive which of old induc'd those *Barbarous Conquerors* the *Goths* and *Vandals* to introduce *Fewes*: For *they* looking upon the Lands of *Lombardy* which they had conquer'd to be their own, divided them among their Officers, allotting every Man a Share in Proportion to the Part he had born in the Danger and Glory of acquiring them. But this can never be said to have been the Case in the *Division* made by our King *Malcolm*. If the Story had gone indeed under the Name of *Fergus*, who is reported to have been the first of our Kings, there might have been a more specious Ground to justify the Parallel between us and the *Vandals*. But even *Fergus* is agreed by all our *Historians* to have been invited over to this Country, and made King by the unanimous Consent of the Natives; and consequently any Power even he could have had to make

a *Division* of the Lands of *Scotland*, could not at all proceed from any Right of Conquest, but must necessarily and naturally be deduc'd from that *Consent* of the People, from which he lawfully deriv'd his Crown.

S E C T. V.

A Passage of Buchanan relating to this Subject.

UPON an impartial Survey of the Reasons adduc'd in the foregoing *Section*, it will appear, that unless we allow King *Malcolm* to have been possessed of a greater Power than ever *Fergus* enjoy'd, which yet cannot be made out, it plainly follows, That this *Division* of the Lands of *Scotland*, did not proceed from any Branch of the *Prerogative*, but flow'd from the Consent of his Subjects, who being willing to possess their Lands, as they thought, in a more regular, tho' in reality, a more *barbarous* Manner than formerly, permitted the *Division* of them to their *Sovereign*, as the Person of the greatest Dignity among them.

To this Purpose I shall quote a Passage out of *Buchanan* the Prince of our *Historians*, which shews what Opinion that judicious Writer intertain'd of these rash Divisions of Lands, and the fatal Consequences of resuming what had been granted. In the end of the 6th Book of his History, he has these Words, *Ac Micolumbus quidem bellis persunctus, aliquot annos magna cum Gloria regnavit. Sed, in ætatis decursu, vitæ Superioris splendorem avaritia sedavit.* And indeed, says he, *Micolumbus* after he had finish'd his Wars, reign'd some Years with great Glory: But in his declining Age he sullied the Splendour of his former Life by his Covetousness. A little after *Buchanan* adds, *Prædia temere Nobilitati divisa per scelus ad se retrahere conatus, multos opulentiorum ita multavit ut alios ad mortem, alios ad extremam egestatem redegerit.* While he endeavour'd unjustly to resume those Lands he had at random divided among the Nobility, he treated the richer sort of them so barbarously, that some were reduc'd to extreme Poverty, and others lost their Lives.

But

But I contend, that whatever Distributions of Lands in this *Feudal* manner have been made, tho' the Method observ'd in them was *irregular* and *barbarous*, as I believe, I have already shown, yet they could not flow from any inherent absolute Power of the *King*, but proceeded from the Consent and Permission of the *People*. I know there are some who so represent this Matter, as if the *King of Scotland* had been *Dominus Soli*, and was as much possess'd of the Property of the whole Lands of this Country as any Nobleman or Gentleman is of his own Estate. But that this is a meer groundless Fiction, and that our Kings were never *Masters of the Soil*, I shall afterwards take an Opportunity to prove.

S E C T. VI.

Of some particular kinds of Fews that obtain in Scotland.

FEws among us are either *Simple* or *Tailzied*: A *Simple Few* is that which belongs to the *Vassal* and his Heirs what-

whatsoever, without any Manner of Limitation.

A *Tailzied Few*, from the *French* Word *Tailler* to Cut, is that which cuts the direct Line in the Succession, to the Exclusion of some nearer Person, who should otherwise be admitted to it.

They are also divided into *Heritage* and *Conquest*, which are much the same with the *Old* and *New Fews* mention'd in the *Feudal Law*, and are so plain and obvious, that they need not be defin'd.

Another *Division* of them in *North Britain* is into *Ward*, *Few*, *Blench* and *Burgage*.

Ward, or *Feudum Militare*, is when Lands are granted in *Few* for *Military Services* to be perform'd. *Servitia Debita & Consueta*, are always interpreted to be *Military Services*. This *Ward-holding* answers almost exactly to the proper *Few* of the *Feudalists* above-mention'd. And it being indeed the *properest* Kind of *Holding*, if we consider the old *barbarous* Original of *Fews*, all Lands are upon this Account presum'd to hold *Ward*, except another Kind of *Holding* is expressly mention'd.

Few-

Few-holding, or *Feudum Emphyteuticum*, is extremely like to that which the *feudal Law* calls *Feudum Pensionarium seu Censuale*, and resembles, in several Things, the *Emphyteusis* of the *Civil Law*. It is that whereby the *Vassal* is bound to pay to the *Superior* a Sum of Money yearly, *Nomine Feudi-firmæ*, upon the Score of *Feu-duty*.

Blench-holding, or *Feudum Blancum*, is much the same with the *Feudum Francum* we have already mention'd ; and is that whereby the *Vassal* is oblig'd to pay an *Elusory Duty*, meerly for Acknowledgement, as a Penny, or a pair of Gloves; and usually it bears, *Si petatur Tantum*.

Burgage-holding, or *Feudum Burgense*, is that in which a *Burgh Royal* is oblig'd to pay a certain Duty to the *King*, and is to him in stead of a *Vassal*.

SECT.

S E C T. VII.

The Kings of Scotland were never Masters of the Soil.

HAVING got over the *Definitions* and *Divisions* of *Fews*, the laborious but useful *Drudgery* of the *Doctors*, I shall now endeavour to make it appear, that these *Fews* which have obtain'd in our native Country, could not possibly proceed from any inherent Right or Power of the *Sovereign*, for that the *Kings of Scotland* were never *Masters of the Soil*.

Those who contend that our *Kings* *sew'd* out the *Lands of Scotland*, as if the *Property* of them had been their own, do in *Reality* affirm what is neither *Possible* nor *True*. It is impossible a *Man* can give what he has not; and he that pretends that our *Kings* bestow'd this *Property* on others, must first prove that they had it themselves, which I believe cannot be made out.

And altho' it must needs be own'd, that *Lands* are enjoy'd at present by several
Kinds

Kinds of *Feudal Holdings*, which in the End terminate in the *Sovereign*; this does no Manner of Prejudice to the Cause I defend, nor signifies more than that there being at first a Necessity of dividing the Lands among the Natives, to avoid the Quarrels that might arise, if every Man took upon him to seize what he could, it was absolutely necessary to fix a certain Method of Distribution, and it was fit that every Man should have something in his own Hands to justify his Title to what he possess'd, according to which, Controversies might be determin'd.

This must be testify'd by some body; and no Man could be so fit, or of so much Credit and Authority as the *King*, who was the chief Person among them: And this is no more than is usual in all the Societies of the World.

S E C T. VIII.

Concerning the Nature and Design of the British Constitution.

THe *British Constitution* is a *limited Monarchy*, and so happily contriv'd, that it exactly answers its main
C Scope

Scope and Design, which is equally to preserve on both sides the *Prerogative* of the *Sovereign*, and the *Liberty* and *Property* of the *Subject*. Nor is there any thing unnatural or absurd in a *limited Monarchy*, as the Author of the *Jus Regium* imagines there is. His Words are these, *Thus we see that in allowing our King to be an absolute Monarch, we have only allow'd him to be a Monarch, and to have what naturally belongs to him, and that by as necessary a Consequence, &c.*

But I contend, That *Limitations* and *Restrictions*, such, for Instance, as we find in the *British Constitution*, are so far from debasing or destroying the Nature of *Monarchy*, that in Reality they improve and exalt it. If we take a View in History, of any *Series* or *Succession* of *Princes*, we shall generally find, that for one good King there have been ten bad ones. Thus how many *Monsters* do we meet with in stead of *Men* among the *Roman Emperors*? How many *Neros* and *Caligulas*, and how few *Trajans* or *Augustus Cæsars*? So apt are Men to abuse an exorbitant and *unlimited Power*. How dangerous then and imprudent is it to permit so valuable and important a Thing

as the Welfare of humane Society, to so very great an Uncertainty? For this Reason it must needs be allow'd, that proper *Limitations* are of infinite Use in this Case, because they render *Monarchy* not only more Just and Reasonable in it self, but more Useful and Advantageous to Mankind, by excluding from it all those pernicious Consequences, and fatal Mischiefs that usually attend Tyranny and Ambition.

Good Kings have often been term'd the *Fathers* and *Shepherds* of their People; which Allusions were made Use of to signify that they ought to take all imaginable Care of their Subjects, and were originally intended for the Preservation of those they govern, to Rule them with a just and gentle Sway, and not with *Ca-ligula*, to wish they had all but one Neck, that they might all be the easier at once destroy'd. I must confess, I was very much surpriz'd to find the Author of the *Jus Regium* talk of this Comparison, of a King and his People, to a Shepherd and his Flock, as if they had been design'd to agree in every Particular. A *Shepherd*, says he, is ordain'd for the Flock, and yet it cannot

be concluded that a Flock of Brutes is to be preferr'd to any reasonable Creature. What? Because a King is sometimes relembled to a Shepherd, upon Account of the tender Care and Concern he ought to have for his Subjects, shall therefore an odious Insinuation be made, That he makes the same Figure with Respect to his People, and maintains the same Superiority above them, as a Shepherd does over his Sheep? A Shepherd, as he is a Man, is indeed always presum'd to be a rational Creature, and his Flock are Brutes; but the Monarch has often been found to be the weakest Man in his Dominions.

S E C T. IX.

The Kings of Scotland were not Absolute Monarchs.

S. Geo.
m. 2.
enr.
THE Author of the *Jus Regium* endeavours to prove that our Kings were *Absolute Monarchs*, by these three Arguments: I. From our *Positive Law*. II. By several Reasons deduc'd from our *Fundamental Laws and Customs*. III. From
the

the Nature of *Monarchy* it self, &c. As for the Second of these, it is apparently grounded upon the falsest Reasoning ever was imagin'd, and is, in Reality, but a more specious Way of begging the Question; since it has been made out beyond all Manner of Dispute, by that great Man *Algernon Sidney*, and other Writers on this Subject, That *Kings do naturally and necessarily derive all their Power from the People*. Any other Monarch degenerates into a Tyrant, and may doubtless be lawfully oppos'd; notwithstanding the frivolous Arguments made use of by the Author of the *Jus Regium*, to support the contrary Opinion. They may certainly be oppos'd, because *they have usurp'd over us a Power inconsistent with our natural Liberty, and owe their Right to that Prescription, which the greatest Tyrants may maintain by Force, and to that Consent which they may procure by Violence or Flattery*. These are the Words of *Algernon Sidney* (which are indeed quoted but not confuted by the Author of the *Jus Regium*) a Man so deservedly admir'd for the Force and Clearness of his Stile and Thoughts, and the Justness of his Reasoning,

soning, that the above-mention'd Writer might have been asham'd to own that ever he had perus'd him. The third Argument to prove that our *Kings* were *Absolute Monarchs*, drawn from the Nature of *Monarchy* it self, has, I believe, been already sufficiently confuted in the foregoing *Section*. I have therefore purposely reserv'd his first Argument taken from our *positive Law*, to be consider'd in the last Place, because I intend to answer it more at large in the ensuing Part of this *Discourse*.

S E C T. X.

It does not appear from our Positive Law, that the Kings of Scotland were Absolute Monarchs.

THE Author of the *Jus Regium*, in Order to prove our *Kings Absolute Monarchs*, adduces two or three Acts of Parliament to confirm his Opinion, which however I am apt to think may, without having an unnatural Sense forc'd upon them, receive another Interpretation than what he is pleas'd to give them.

The

The first of them he mentions in the following Manner, *By the 25 Act, Parl. 15. Ja. 6. the Parliament does acknowledge, That it cannot be deny'd but His Majesty is a Free Prince, of a Sovereign Power, having as great Liberty and Prerogatives, by the Laws of this Realm, and Privilege of his Crown, and Diadem, as any other King, Prince, or Potentate whatsoever.*

Now, these Words seem to be so far from strength'ning and supporting what he had advanc'd, that I am apt to believe, they entirely destroy it. For, what other Consequence can naturally be deduc'd from that Expression, *By the Laws of this Realm*, than that to them the Sovereign owes these valuable *Prerogatives*.

It is, I think, agreed by all *Lawyers* who have laid down Rules for the Explanation of *Laws*, that they ought to receive such an Interpretation as is agreeable to the Spirit, Design, and Genius which runs thro' the whole Series and Body of them. For this Reason, when any occur that in Appearance contradict this general Scope and Intent, (such for Instance, as those few *Laws* adduc'd by the

the Author of the *Jus Regium*) they must needs admit of such an Explanation as is suitable to the Spirit which visibly runs thro' the rest, and was apparently the Design and Intention of the *Legislative Powers*.

Now, that our *Monarchy* was always *limited* and restricted by Law, (tho' as this *Northern* Part of the World grew more polite and civiliz'd, it still receiv'd further Improvements, till at last it was happily establish'd by the present *British Constitution*) will, I think, evidently appear from unnumber'd Passages in our *Acts of Parliament*, some of which I shall mention for the Proof of my Assertion.

S E C T. XI.

A further Illustration of this Point from our Positive Law.

THAT the Kings of *Scotland* have been always *limited* and restricted by *Positive Law*, and did in Reality derive their Power and *Prerogative* from the
Peo.

People, does evidently appear from numberless Passages in our *Acts of Parliament*. I shall only mention some of them, least this *Discourse* should prove too long and tedious, and exceed its intended Bounds.

Act 2. Parliament 2. James 4.

The Rubrick of the Act is, *For inbringing of the Taxation, and undoing of the King's Discharge for any Part thereof.* The last Clause of it is as follows, *And because the Lords understand that there is some Part of Letters granted by the King to his Spiritual Lords and Prelates, and also to Temporal Lords, and to Barons, of Discharge of Part of the said Tax; The whilk the said Lords consider and understand the King might not discharge, since it was granted by the said Estates to the said Ambassadour, and for the Cause fore-said: Therefore the saids Letters of Discharge to be of no Defaisance to them. And that no such Letters have Strength, Force, or Effect. And that Letters of Discharge be made under the Privy Seal, and sent to the Ordinarys and Sheriffs thereupon.*

Sir George Mackenzie, that great and violent Asserter of *Absolute Monarchy*, is so very much at a Loss how to account

for some Expressions in this Act, that he is oblig'd in his *Observations* upon it to say, *I understand not how it is said here, That the King could not Discharge any Part of the Taxation granted to him, tho' it was granted for a particular or publick Use, for it is ordinary and lawful for Kings with us, to discharge private Parties their particular Proportions, except the Contrary be expresly provided, and the Offer be so qualify'd by the Parliament, &c.*

Afterwards he goes on to account for it, by telling us the King was *Minor*, but this not fully satisfying even himself, he adds, *Or rather this Taxation being granted originally for maintaining an Ambassadour for the King's Marriage, as is clear by the Act, and so ad particularem Effectum, it could not be diverted from that particular Use, least else the Embassy should have fail'd, &c.*

These are indeed very specious and plausible Reasons, but there is a great Difference between giving a good Reason for a Thing, and assigning the true one. For, I am confident, that the *Stile* and *Manner* of this Act cannot be more
rea-

reasonably accounted for, than from the Power of *Parliaments*, from which all lawful *Sovereigns* derive their own. And this will still appear more evident, upon a Survey of the *Limitations* and *Restrictions* mentioned in the 12th *Act* of the same *Parliament*, about the Middle of which we find this remarkable Expression.

For the secluding of the samen, his Highness has granted and consented by Authority of this present Parliament, That no such Gifts, Signatures, Remissions, Respites, Conducts, and other Letters, shall pass in Time to come, without Advice and Consent of the said Secret Council.

I appeal to Readers of any Candour and Impartiality, if that Expression, *Granted and Consented by Authority of this present Parliament*, does not point out and represent to us the *Majesty* and Power of *Parliaments*, in the most forcible Manner. And that I may not be censur'd for saying the *Majesty* of *Parliaments*, I think I need not produce any better Authority than that of *Cicero*, to bear me out in this Expression, who tells us in his *Pleading* against *Cæcilius*, near the End, *Civitatisque Majestas gravis*.

habebatur : And the Majesty of the State was held in Veneration.

As there is nothing more Sacred and Solemn than an Oath, we find our *Kings* are oblig'd upon their Entry to the Exercise of their Office, to swear, *That they shall maintain, and act according to, the Laws and Statutes of this Realm*, as appears from the 8 *Act*, 1 *Parl. Ja.* 6.

The *Rubrick* of this useful and memorable *Statute* runs thus,

Anent the Kings Oath to be given at his Coronation : About the middle of this *Act* we find the following Words, *And shall rule the People committed to their Charge, according to the Will and Command of God reveal'd in his foresaid Word, and according to the laudable Laws and Constitutions receiv'd in this Realm no ways repugnant to the said Word of the eternal God.* Here we have not only a *Limitation* made in the most Sacred Manner imaginable, namely with the Solemnity of an Oath, but the Office of Princes, and the true Design and Intent of *Monarchy* fully represented to us.

I shall only mention one *Act* more upon this Head, to wit, The 176 *Act*, 13 *Parl. Ja.*

Ja. 6. Concerning the Annexation of the Property to the Crown, wherein these remarkable Words occur, which need only to be barely transcrib'd, in order to prove the extent of the Power and Authority of Parliaments.

And albeit, it shall happen our Soveraine Lord that now is or any of his Successoures, Kings of Scotland, to annalie and dispone the saids Lands, Lord-Schippes, Castelles, Tounes, Donation and Advocation of the Kirkes and Hospitales, with the Fertinentes annexed to the Crown, as said is, urtherwise: That the said Alienationes and Dispositiones, shall be of nane availe, but that it shall be Lesum to his Hienesse, and his Successoures to receive the same Landes and Rentes to their arwin use, quhen ever it likis them, without any Process of Law: And the Takers to refound and pay all Profites that they have taken up thereof, again to his Hienesse, and his Successoures uses, for all the Time that they have had them, with sik urther Restrictiones, as ar contain'd in the Acts of Parliament, maid be his maist noble Progenitours, Kingis of Scotland, in their Annexationsto the Crown.

S E C T.

[10]

S E C T. XII.

*The Rigid Observance of Fews is Inconsistent
with the present Constitution.*

IT is needless to be at any great Pains to shew that the *Rigid Observance of Fews and Superiorities* is in it self a *Grievance*, since the Truth of this Assertion is, at the first View, so very obvious and evident, and that old trite Maxim, which 'tis almost *Pedantry* to mention, *Summum jus, summa injuria*, sufficiently confirms it.

But I believe, it may be easily made out from the Nature of the Thing, that the too strict and rigorous *Observance* of them has no small Tendency to defeat the Ends and Designs of the present *British* Constitution, which is, beyond all manner of Dispute, a *limited Monarchy*.

This may, I presume, be made appear, if we consider, *in the first Place*, That the *rigid Observance of Fews* seems to be very much contrary to that Use of Property a *British* Subject ought to enjoy, and which the Felicity of our present Constitution may make him justly expect.

Secondly,

Secondly, Our Feudal Methods of *Holding* deriv'd to us from the *Barbarous Original* we have already taken notice of, if they are from the *Crown*, in case they are *rigidly observ'd*, do, I'm affraid, give the mildest and best Government in the World, (as I am satisfy'd ours is) too much the Air of *Tyranny* and *despotical Power*.

Thirdly, If the manner of *Holding* is from a *Subject* ; when it is too severely observ'd, the Case is still worse, because it too much *enslaves* us to those who ought only to be our *Equals*. This gave the fatal Rise and Continuance to these *Barbarous Clanships* and *Dependencies* in the remoter Parts of *North-Britain*, which have so much tended to inflame and foment the late unnatural *Rebellion* among us against the best of *Kings*.

F I N I S.
